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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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10/806,022

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Jeffrey S. Kiel

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03/12/2009

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EXAMINER

OH, TAYLOR V

ART UNIT

PAPER NUMBER

1625

MAIL DATE

DELIVERY MODE

03/12/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

It is noted that applicants have filed an Amendment after the Final Rejection on 2/19/09; applicants' attorney has addressed the issues of record. The proposed amendment will be not entered due to applicants' failure to modify some of the claims in the amendment; thus, it is not in a condition for allowance.

### **The Status of Claims**

Claims 1-2 and 5-28 are pending.

Claims 1-2, 5-10, 18-19, 25, and 27 are rejected.

Claims 11-17, 20-21, 26, 28 are objected.

Claims 22-24 are allowable.

### **Claim Objections**

The proposed amendment will overcome the objection of Claims 11-17, and 20-21.

### **Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The proposed amendment will overcome the rejection of Claims 1-2, 5-10, 18-19 under 35 U.S.C. 103(a) as being unpatentable over Bryans et al (US 7,141,606) in view of Berge et al

Art Unit: 1625

(J. of Pharmaceutical Sciences, 66,no. 1, Jan, 1977, p.1-19); however, the rejection of Claims 25, and 27 under 35 U.S.C. 103(a) as being unpatentable over Bryans et al (US 7,141,606) in view of Berge et al (J. of Pharmaceutical Sciences, 66,no. 1, Jan, 1977, p.1-19) will be maintained with reason of record filed on 9/24/07.

### Applicants' Argument

Applicants argue the following issues:

- a. The following Table explains the perceived errors in the claims rejections and objections:

| New Claim | Old Claim            | Basis for rejection of old claim | Basis for rejection of new claim |
|-----------|----------------------|----------------------------------|----------------------------------|
| 22        | 11                   | Objected to                      | Allowed                          |
| 23        | 12                   | Objected to                      | Allowed                          |
| 24        | 13                   | Objected to                      | Allowed                          |
| 25        | 16                   | Objected to                      | Rejected over prior art          |
| 26        | 17 (dependent on 25) | Objected to                      | Objected to                      |
| 27        | 20                   | Objected to                      | Rejected over prior art          |
| 28        | Dependent on 27      | Objected to                      | Objected to                      |

Applicants' arguments have been noted, but the arguments are not persuasive.

First, regarding applicants' arguments, the Examiner has noted applicants' arguments. However, regarding the errors present in the office action, the examiner could not perceive the errors mentioned in the office action by the applicants ; as previously pointed out in the Office action, Claims 22-24 are allowable; Claims 1-2 ,5-10,18-19, and 25 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bryans et al (US 7,141,606) in view of Berge et al (J. of Pharmaceutical Sciences, 66,no. 1, Jan, 1977, p.1-19) and the claims depending on the

Art Unit: 1625

rejected claims are considered to be objected. The main issue is the applicants' unwillingness to modify the rejected and objected claims; in view of the allowable claims, the examiner recommends to change the rejected and objected claims in such a way that all the claims in the proposed amendment will be allowable.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Taylor Victor Oh whose telephone number is 571-272-0689. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Janet Andres can be reached on 571-272-0867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Taylor Victor Oh/

Primary Examiner, Art Unit 1625

3/11/09

Application/Control Number: 10/806,022  
Art Unit: 1625

Page 5